



State of Michigan
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Department of Consumer & Industry Services
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August 31, 1998

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Dear #####:

This is in response to your letter dated August 7, 1998, requesting that the Financial Institutions Bureau (Bureau) confirm your interpretation of section 13(4) of the Regulatory Loan Act of 1963, MCL 493.13(4) (RL Act), relating to the proposed loan program of ##### (hereinafter, #####).

proposes to establish payday advance operations in Michigan similar to those of companies (Existing Companies) whose programs have been reviewed by the Bureau and determined not to require licensure. You state that, unlike the 5% per annum charged by the Existing Companies, ##### would charge a higher rate of interest for holding the customer's check (making a loan to the customer), which would require licensure under the RL Act. ##### would make a payday advance loan to a customer at a rate of interest of 25% per year. In addition to such payday advances, ##### would offer check cashing and charge the customer a fee not to exceed \$14 per hundred of the face amount of the check. Your question is whether, as a lender licensed under the RL Act, ##### would be able to charge a payday advance customer a check cashing fee of such amount.

Before I discuss specifically the question you raised, I would like to correct some apparent misapprehensions reflected by two statements in your letter. First, your letter claims that the Bureau and the Attorney General have deemed the \$14 per hundred check cashing charge assessed by the "Existing Companies" reasonable. Neither the Bureau nor the Attorney General has expressed an opinion on the reasonableness of such charges. Under current law, any ruling on reasonableness most likely would come from the courts. Second, you indicate that ##### payday advance operations will be similar to those of the Existing Companies "since their operations have been reviewed and approved by the Bureau and the Attorney General." Neither the Bureau nor the Attorney General has formally "approved" any of the programs of the Existing Companies. The Bureau stated only that the conduct of payday advances in the manner described by the company would not subject it to licensure under the RL Act. I should point out that, in all such

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Page 2

cases, the Bureau retains the option of revisiting the issue and reevaluating its position should the facts of a given situation warrant.

Returning to your question, section 13(4) of the RL Act, MCL 493.13(4), states, in pertinent part, as follows:

“In addition to the interest and charges provided for in this act, a loan processing fee not to exceed 2% of the principal, up to \$40.00, may be charged for each closed-end loan made, and may be included in the principal of the loan. A licensee may require the borrower to pay the late charges permitted by Act No. 162 of the Public Acts of 1995. . . . No other amount shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid by the licensee to a governmental entity for the filing, recording, or releasing of either of the following:

- (a) A financing statement or an instrument securing the loan, or both.
- (b) A record noting or releasing a lien or transferring a certificate of title under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.1 to 257.923 of the Michigan Compiled Laws.”

You argue that because check cashers (which charge check cashing fees) are not regulated in Michigan, a reasonable check cashing fee is not regulated by the Bureau. While an unregulated check casher routinely charges check cashing fees, it is not permitted, as an unregulated lender making a payday advance, to charge a rate of interest in excess of 5% per annum, MCL 438.31. A licensee under the RL Act as a regulated lender, on the other hand, may charge a rate of interest of up to 25% per annum, but is subject to the restrictions contained in the act.

As you know, section 13(4) authorizes the fees, apart from interest, which a licensee can charge – a loan processing fee not to exceed 2% of the loan amount, up to \$40, and a late charge up to the greater of \$15.00 or 5% of the installment payment. These fees and recording fees are the only fees expressly authorized by the RL Act. The intent of the restrictive language in section 13(4) is clearly to restrict the fees charged by licensees to those expressly authorized and their amounts. I must conclude, therefore, that a licensee under the RL Act is not permitted to charge a check cashing fee.

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August 31, 1998

Page 3

You should note that if a check cashing fee was “. . . charged, contracted for, or received . . .
“ by a licensee under the RL Act and the fee was determined to be unlawful, section 13(8)
provides that the licensee would forfeit all principal, interest, and fees.

Given this position, if you wish to pursue legislative amendments, we would appreciate being
kept apprised.

I hope that this answers your question. If you have any questions or concerns, please contact
me at 517/373-3460.

Sincerely,

/ ss /

Gary K. Mielock
Chief Deputy Commissioner

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